

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LUTHER NORMAN WHALEY,

Defendant.

CR 22–02–BU–DLC

ORDER

Before the Court is United States Magistrate Judge Kathleen L. DeSoto’s Findings & Recommendation Concerning Plea. (Doc. 32.) Because neither party objected, they are not entitled to *de novo* review. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Therefore, the Court reviews the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Whaley is charged with one count of robbery affecting commerce, in violation of 18 U.S.C. § 1951(a) (Count I), one count of brandishing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii) (Count II), and one count of felon in possession of a firearm, in violation of 18

U.S.C. § 922(g)(1) (Count III), as set forth in the Indictment. (Doc. 1.) Judge DeSoto recommends that this Court accept Whaley's guilty plea as to Count II after Whaley appeared before her pursuant to Federal Rule of Criminal Procedure 11. The Court finds no clear error in Judge DeSoto's Findings and Recommendation and adopts them in full, including the recommendation to defer acceptance of the Plea Agreement until sentencing when the Court will have reviewed the Plea Agreement and Presentence Investigation Report. In light of the United States' motion for preliminary order of forfeiture (Doc. 34), the Court will address the issue of forfeiture by separate order.

Accordingly, IT IS ORDERED that Judge DeSoto's Findings and Recommendation (Doc. 32) is ADOPTED in full.

IT IS FURTHER ORDERED that Whaley's motion to change plea (Doc. 25) is GRANTED.

IT IS FURTHER ORDERED that Whaley is adjudged guilty as charged in Count II of the Indictment.

DATED this 14th day of October, 2022.



Dana L. Christensen, District Judge
United States District Court